

1 Q Yes, sir. But at one time you did attempt
2 to investigate crowded, correct?

3 A I don't recall. Do you have a reference?

4 Q Yes, sir.

5 MR. CAMPBELL: Your Honor, may I approach
6 with an exhibit?

7 JUDGE SIPPEL: Sure.

8 MR. CAMPBELL: That has been marked for
9 identification as Gulf Power Exhibit 76.

10 JUDGE SIPPEL: It's been marked for
11 identification as Gulf Power Exhibit 76.

12 (Whereupon, the above-mentioned
13 document was marked as Gulf
14 Power Exhibit 76 for
15 identification.)

16 BY MR. CAMPBELL:

17 Q Mr. Harrelson, am I correct that Gulf
18 Power Exhibit 76 is an e-mail to you from Mr. Seiver
19 dated February 4, 2005?

20 A That's correct.

21 Q And the attachment to it appears to be a
22 typed up outline of what you hand wrote during a visit

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1 to Mr. Seiver's office. Is that accurate?

2 A That's correct.

3 Q So the words that appear on the
4 typewritten document on Pages 2 and 3 -- am I accurate
5 that in February of 2005, you visited in Mr. Seiver's
6 office and had a meeting concerning this case?

7 A On or about that date, I did.

8 Q Yes, sir. And following that meeting, Mr.
9 Seiver typed up your handwritten notes and e-mailed
10 them to you. Correct?

11 A That's correct.

12 Q That's what is captured in this Exhibit
13 76. Correct?

14 A Correct.

15 Q Now, if you turn to Page 2 of this
16 exhibit, it appears to be draft of Harrelson outline.
17 Correct?

18 A Yes.

19 Q And the title of the document that appears
20 there is "Sources of Crowding and Code Violations."
21 Do you see that?

22 A Yes, sir.

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1 Q And you use the term sources of crowding.
2 Correct?

3 A It appears that I did.

4 Q And that was your term.

5 A Well, I think it's descriptive and --

6 JUDGE SIPPEL: Was it your term? Answer
7 his question first. Was that your term?

8 THE WITNESS: I'm not certain. I would
9 need to go and find my handwritten notes. But it
10 describes what I was trying to convey.

11 BY MR. CAMPBELL:

12 Q Yes, sir. And while you mention the
13 handwritten notes, you can't go find those, can you?

14 A No.

15 Q So they're not available, are they?

16 A Well, I think I have them back in Georgia.

17 Q Well, I hope not, Mr. Harrelson, because
18 I asked your counsel to produce them, and I was
19 informed that they are no longer in existence, that
20 they can't be found. Are they in Georgia or have they
21 been thrown away?

22 A I would have to look and see. I don't

1 know.

2 Q Would you do that please, sir?

3 A I'll be glad to.

4 Q Thank you. Going on down, you link
5 sources of crowding to the NESC, correct?

6 A Yes.

7 Q And am I accurate that many of the NESC
8 measurements that you refer to in this document are
9 some of the measurements that were taken by Osmose, as
10 well, in this case?

11 A Osmose took such measurements as I have
12 described here. Yes.

13 Q Yes, sir. That is accurate?

14 A That is correct.

15 JUDGE SIPPEL: Where are those descriptions
16 of what Osmose did? Which paragraph?

17 MR. CAMPBELL: They are captured at Gulf
18 Power Exhibit 42 and other places. Here, it's not
19 referenced to NESC. He just says code violations, and
20 then, he sets forth certain measurements.

21 JUDGE SIPPEL: Okay. The "here" being 76.

22 MR. CAMPBELL: Exhibit 76. Yes, sir.

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1 JUDGE SIPPEL: Thank you.

2 BY MR. CAMPBELL:

3 Q So at least as of February 2005, you had
4 some understanding of what the phrase, "sources of
5 crowding" meant. Correct?

6 A I don't know that I did. I know that term
7 was used. But I don't know that any effort was made
8 at that time to try to define.

9 Q Yes, sir. The term was used by you,
10 right, Mr. Harrelson?

11 A Yes.

12 Q Mr. Harrelson, I want to show you another
13 document --

14 MR. CAMPBELL: Would you mark that, please,
15 Katy?

16 JUDGE SIPPEL: You know what, to be
17 certainly as open as I can with you on this question,
18 it's an excellent question, but Mr. Cook referred me
19 to -- I don't have the order in front of me -- but
20 anyway, he did refer me to something where I wrote
21 full capacity was going to be the standard. And I'm
22 certainly not going to go back and reverse my position

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1 on that.

2 Full capacity, based on my understanding
3 of how I've been approaching this case, is the
4 standard that I've been looking for. That does not
5 mean that either side or both sides cannot address
6 crowded or that I look upon crowded evidence as being
7 irrelevant. But my mind set has been established in
8 the course of reading what the issues have been in
9 this, starting with the Eleventh Circuit, up through
10 the times of my issuing those orders, that really it's
11 a full capacity issue that I'm looking for.

12 MR. CAMPBELL: Your Honor, we understand
13 that.

14 JUDGE SIPPEL: Okay.

15 MR. CAMPBELL: However, we have proffered
16 that crowding and full capacity are one in the same.

17 JUDGE SIPPEL: All right. No. I'm not
18 trying to say that that may not come out that way.
19 I'm just simply saying that I don't want to mislead
20 you. What I said earlier that Mr. Cook is right. I
21 did make a commitment on full capacity. And coming up
22 to this part of the case, that's exactly what I've

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1 been thinking of full capacity, recognizing all along
2 that crowded goes through many of these cases. It
3 goes through the cases at various times. So there
4 obviously is an interchangeable usage of these terms
5 in some way shape or form.

6 I have the same problem Mr. Harrelson did.
7 I'm trying to work with just one concept in terms of
8 how I'm thinking things through. But it does not
9 eliminate the other concept, obviously.

10 MR. CAMPBELL: That's correct. And what
11 we're going to establish and what Mr. Langley
12 attempted to establish with Ms. Kravtin yesterday, is
13 that we think the witnesses in the proceeding have
14 been using the terms interchangeably. And the
15 distinction was only created in order to attempt to
16 exploit some legal distinction between the two terms,
17 and it predated Your Honor's ruling. So the time line
18 here is very important, and that's we're going through
19 this line of questioning.

20 JUDGE SIPPEL: Okay.

21 MR. CAMPBELL: Your Honor, I'm handing you
22 a document we have marked for identification purposes

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1 of Gulf Power Exhibit 77.

2 JUDGE SIPPEL: This is identified as Gulf
3 Number 77.

4 MR. CAMPBELL: I'm handing a copy to Mr.
5 Harrelson.

6 BY MR. CAMPBELL:

7 Q You've seen this document before, correct,
8 Mr. Harrelson?

9 A I have.

10 Q This is a draft report that you prepared
11 on or about March 21, 2005, correct?

12 A Yes.

13 Q And you wrote this yourself, didn't you,
14 Mr. Harrelson?

15 A I did.

16 Q Mr. Harrelson, could you turn to Page 4 of
17 this exhibit? Actually, I'm sorry. Page 5. And at
18 the top of Page 5, you set forth that "the following
19 are some sources of crowding and code violation on
20 existing and new poles." Correct?

21 A Correct.

22 Q And then, you have below that header all

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1 of the different measurements that you want to take a
2 look at, correct?

3 A Yes.

4 Q Am I accurate, Mr. Harrelson, that those
5 are the same measurements that you took for purposes
6 of rendering your opinion in this case that Gulf
7 Power's poles were not at full capacity?

8 A I think so.

9 Q Yes, sir. So although the term changed,
10 the measurements stayed the same. Right?

11 A The code doesn't change. Right.

12 Q Right. The measurements you took for
13 purposes of rendering your opinion didn't change
14 either, did it?

15 A Correct. The engineering guidelines
16 didn't change one way or the other.

17 MR. CAMPBELL: Katy, could you pull out
18 Gulf Power Exhibit, I think it's 74.

19 MR. SEIVER: Are we going to come back to
20 this exhibit?

21 MR. CAMPBELL: We might or might not, John.
22 I don't know.

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1 MR. SEIVER: I just thought there was
2 something unclear, but I'll take care of it.

3 BY MR. CAMPBELL:

4 Q Mr. Harrelson, I have up on the screen a
5 document that has been admitted into evidence as Gulf
6 Power Exhibit 74. You've seen this document before,
7 correct?

8 A I can't see that one.

9 Q Well, I'm going to blow it up for you.
10 Can you see it now?

11 JUDGE SIPPEL: Can you see it okay, Mr.
12 Harrelson?

13 THE WITNESS: I do. Yes, sir.

14 BY MR. CAMPBELL:

15 Q This is a March 9, 2005 e-mail from Mr.
16 Joseph to Mr. Seiver. You've seen this e-mail before,
17 correct?

18 A Yes.

19 Q Did you review in March of 2005 this
20 paragraph in the e-mail that references to the term
21 crowding should not be used or should be limited?

22 A I'm sure I read it. Yes.

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1 Q Okay. Am I accurate that sometime after
2 March 2005, you stopped using the term "sources of
3 crowding"?

4 A I probably did. As I've explained, it
5 didn't matter to me, and still doesn't.

6 Q Am I accurate, Mr. Harrelson, that at the
7 time you wrote the draft report that is marked as Gulf
8 Power Exhibit 77 in this case, which was March 21 of
9 2005, you had not yet visited Gulf Power's poles?

10 A Not for the purposes of gaining detailed
11 information, I had not. I live not too far from
12 there, and I had driven and have a bad habit of
13 looking at poles everywhere I go.

14 Q Unfortunately, I do too, as well, these
15 days. You hadn't gone out and taken any measurements
16 of Gulf Power's poles, correct?

17 A I had not other than the brief involvement
18 that I had with a project in Panama City, as we've
19 already discussed.

20 Q And that was in 1998, 1999, correct?

21 A That's correct.

22 Q For purposes of this proceeding and

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1 rendering the opinions you're going to render in this
2 proceeding, you had not gone out to Gulf Power's poles
3 and done any measuring, photographing, any analysis as
4 of March 21 of 2005, correct?

5 A That's correct.

6 MR. CAMPBELL: Your Honor, I think I'm at
7 a good stopping point if we want to have the lunch
8 break before I move into another topic.

9 JUDGE SIPPEL: All right. It's about 5
10 after 12:00. We'll come back at a little after
11 quarter after 1:00, closer maybe to 1:20, because I
12 owe you five minutes. And can you give me any kind of
13 an idea in terms of time?

14 MR. CAMPBELL: I am not optimistic that
15 we're going to finish today, Your Honor. I'm going to
16 try. I would like to finish, but I am not optimistic.

17 This witness' testimony covers some three
18 binders that I have over here of analysis on 100
19 poles. We're not going to go through the 100 poles
20 line by line, but I do want to test his conclusions on
21 some of them. And that's going to take some time. He
22 also testifies about our specifications. And we've

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1 got to do it. And there's just a lot to cover.

2 JUDGE SIPPEL: Okay. Well, do the best you
3 can. We'll come back after lunch and pick up where we
4 left off.

5 You're still under oath, sir. And you're
6 not to talk to your counsel about the substance of
7 your testimony.

8 THE WITNESS: Yes, sir.

9 JUDGE SIPPEL: You follow me on that?
10 We're in recess until 1:20. Thank you.

11 (Whereupon, the foregoing matter went off
12 the record at 12:02 p.m. and went back on the record
13 at 1:23 p.m.)

14 JUDGE SIPPEL: We're back on the record.
15 This is the afternoon session, Thursday, 27 April.

16 I just want to mention to counsel, to Mr.
17 Campbell, particularly, that you've really established
18 an awful lot this morning with respect to what I think
19 are the critical fact situations and distinctions
20 between what the two parties' approach to this case
21 is. And I know that you're loaded for bear, in a
22 sense, with your two notebooks and tabs and all.

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1 And I'm not trying to interfere with what
2 you're doing. But I just want to let you know that I
3 don't think that this needs, this doesn't need the
4 letter perfect ultimate cross-examination in light of
5 what this case is about and in light of where it
6 stands now as far as the record is concerned.

7 I just want to pass that along to you. I
8 know you do move things along, so I'm certainly not
9 critical of your questioning techniques or anything.
10 But let's see what we can do.

11 MR. CAMPBELL: We will continue our best.
12 His pre-trial written direct, Your Honor, is 61 pages
13 of testimony. And there's a lot of testimony there
14 not to mention the two volumes of exhibits that
15 accompany. So a lot of ground is covered by the
16 witness. But I'll do my best.

17 JUDGE SIPPEL: I appreciate that. There's
18 a lot of words, and there's a lot of pages. But I
19 heard pretty clearly what I heard this morning.
20 Anyway, that's the basis for my comments. So please
21 go forward.

22 MR. CAMPBELL: Yes, sir.

1 BY MR. CAMPBELL:

2 Q Mr. Harrelson, before the lunch break, we
3 were talking about your definition or your analysis of
4 when a pole is at full capacity, correct?

5 A Yes.

6 Q And I'm accurate that you didn't find a
7 pole that you analyzed in this proceeding that was at
8 full capacity.

9 A That's correct.

10 Q You did, however, provide us an example of
11 one pole that in the future, I guess if it's
12 repeatedly changed out, might reach full capacity,
13 correct?

14 A That's correct. And depending up the
15 design characteristics of that overhead transmission
16 line and the one that I said could only be changed out
17 to a certain extent, I don't know if it could be
18 changed out once, twice, or really at all. But it
19 appears that it could be changed out perhaps one or
20 more times.

21 Q Sir, I'd like to show you the picture of
22 that pole that you're referring to. And it's Pole

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1 Number 44 and what I think is your Exhibit 7, correct?

2 A Yes.

3 Q I'll just walk up here. And I guess my
4 question is this, Mr. Harrelson. The restraint on
5 this pole being changed out, whether it's one or two
6 times is the transmission lines that appear overhead,
7 correct?

8 A The adequate separation from those lines.
9 Yes.

10 Q Yes, sir. And the other examples that you
11 give us from your testimony, which I believe is at
12 Page 8, Lines 12 through 16 of situations where you
13 might have a pole at full capacity, you mentioned the
14 overhead transmission line situation, correct?

15 A Yes.

16 Q And that's typified in this photograph
17 that's up on the screen right now, Pole Number 44,
18 right?

19 A Yes.

20 Q You also say poles near airport runways
21 with their height limited by the FAA is another
22 example of where you might have a pole that has a

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1 height limitation, right?

2 A Yes.

3 Q Another pole which might have a height
4 limitation is one that is limited by local government
5 regulations, correct?

6 A Yes.

7 Q Am I accurate, sir, that in the examples
8 that you give us, and let's just start with Pole
9 Number 44 here, that you don't really need to do any
10 measurements to determine whether or not there's a
11 limit to that pole?

12 A I don't. No.

13 Q No, sir. You just have to go out and look
14 up overhead and see if there's anything in the way.
15 Right?

16 A Right. To determine the maximum height of
17 that pole, I would have to refer to design documents
18 and a number of other engineering considerations. But
19 to determine that there is a limit, I can tell that
20 visually.

21 Q Yes, sir. And the situation you described
22 with respect to the airport, you can look that in some

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1 kind of regulations or ordinances, correct?

2 A It's airport specific and the glide slope
3 and things of that nature. But it can be determined
4 from engineering data.

5 Q And if you were going to look at the local
6 government regulations, that would be available, and
7 then, set forth what the limitation's pole height are,
8 right?

9 A Yes. There are some areas where, by
10 regulation, things interfere with the normal evolution
11 of overhead pole lines.

12 Q So for purposes of implementing your
13 analysis of whether a pole is at full capacity, there
14 are many, many instances in which you don't even have
15 to take measurements to make that determination,
16 correct?

17 A I think that's true.

18 Q Notwithstanding that --

19 A Wait, now. I'm sorry. To determine if a
20 pole is at full capacity, I might have to take
21 measurements. But to determine that there is a limit
22 to the thing, ultimately, that can be done by a quick

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1 inspection.

2 Q Right. Just go out to the location and
3 look up and see if there's anything obstructing you
4 putting up a larger pole, right?

5 A That is correct. But this example would
6 illustrate that that pole, perhaps, is 35 foot. And
7 45 might be the maximum. But I don't know either one
8 of those numbers to be true.

9 I do think that due to the relationship of
10 the location of that pole with the overhead lines and
11 the location of that big steel structure in the
12 background, that that line could be placed at a higher
13 elevation. But how high would be an engineering
14 study.

15 Q All right. Let's look at the preceding
16 pole, Pole Number 43 and your Exhibit 7. There are no
17 transmission lines here, correct?

18 A That's correct.

19 Q So again, for purposes of demonstrating
20 this analysis of whether this pole could reach full
21 capacity, in looking at this pole, you'd go out to the
22 pole and look up and see if there are any transmission

1 lines, right?

2 A That would be one thing to look for. Yes.

3 Q You'd look to see if there's an FAA
4 regulation that limits your ability to change this
5 pole out and put another one in, correct?

6 A That would be one thing.

7 Q Look at local ordinances and determine
8 whether there's any limitation there, right?

9 A Right.

10 Q And all that you can do without measuring
11 the separation between these communications cables on
12 this pole, right?

13 A That's correct.

14 Q Notwithstanding that fact, Mr. Harrelson,
15 you spent a great deal of time analyzing the
16 measurements and data relating to 100 poles identified
17 in this case, haven't you?

18 A Yes.

19 Q How much time have you spent doing that?

20 A It would be a very general estimate. I
21 think 100 hours or more.

22 Q And that's looking at the poles

1 themselves, correct?

2 A Right.

3 Q Looking at pictures of the poles.

4 A Yes.

5 Q Analyzing Osmose's measurements of the
6 poles.

7 A Yes.

8 Q And analyzing the complainant's
9 measurements of the poles.

10 A Correct.

11 Q And doing some limited measuring yourself,
12 is that right?

13 A Very limited measuring and considerable
14 amount of photographing. Yes.

15 Q Now, I'm accurate that you found some
16 discrepancies with the Osmose data, right?

17 A Some.

18 Q And you were in the courtroom when Mr.
19 Seiver questioned Mr. Bowen about some errors in the
20 Osmose data, correct?

21 A Yes.

22 Q Okay. And you talk about some of those

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1 errors in your Exhibit 6 and 7, right?

2 A Yes.

3 Q Now, it's normal in this industry when
4 folks go out and take these types of measurement that
5 you'll have some variances from one man to the next,
6 right?

7 A I think it's normal. Yes.

8 Q So if two crews go out and measure the
9 same pole, you might have some discrepancies in
10 measurements.

11 A Yes.

12 Q And that just depends on where they were
13 standing when they stuck the stick up in the air and
14 things of that nature, right?

15 A That would be one of the variables. Yes.

16 Q And you, yourself, have performed these
17 types of calculations and measurements in the past,
18 correct?

19 A That's true.

20 Q And that's for a company that you're
21 affiliated with in some way called UCI?

22 A I work for UCI occasionally. Yes. I do

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1 a good bit of that type work on my own, though, with
2 clients that I work for directly.

3 Q And you go out to poles and take
4 measurements for vertical separation, correct?

5 A That is correct. And in some of those
6 instances, depending upon the agreement of how the
7 work is to be done, some of it is visual without even
8 doing actual measurements.

9 Q When you contract with your clients to go
10 out and perform this type of work, is there a margin
11 of error that you represent you will meet?

12 A Not specifically as it was in the Osmose
13 survey. No.

14 Q But you make mistakes yourself, don't you,
15 Mr. Harrelson?

16 A I do.

17 Q What would you consider to be your
18 acceptable margin for error on a project like this?

19 A I think 97 is a high reliability if that's
20 the standard that's agreed to. I typically don't say
21 97, 95 or anything else. But I do take original
22 amount of care to get the end result to be accurate

1 and then agree to review anything that someone would
2 like to discuss further.

3 Q Do you think that you yourself rate out at
4 90 percent or higher when you do this type of
5 measuring?

6 A I think I do.

7 Q Did Osmose rate out in your opinion at 90
8 percent or higher?

9 A I haven't tried to make that
10 determination, but I think so.

11 Q And you think they went out and made their
12 measurements in good faith for purposes of their
13 exercise, correct?

14 A I do.

15 Q Did you spend time, Mr. Harrelson,
16 analyzing the accuracy of the Complainant's
17 measurements that you looked at in forming your
18 opinions in this case?

19 A No. And I'd like to add that I didn't put
20 very much significance on the specific measurements
21 that they took either. They were to give general
22 validation of photographs to be used as examples not

1 to do make-ready engineering or even NESC compliance
2 determinations, just for discussion purposes and for
3 illustration of certain points.

4 Q And the reason you did that is because for
5 purposes of your definition of when a pole is at full
6 capacity, as long as make-ready can be performed, the
7 measurements don't matter, do they?

8 A Well, no. That's not true.

9 Q Well, help me out.

10 A What I wanted to include in the discussion
11 or the considerations is the different levels of
12 problems on poles. Because it's a central idea in the
13 business that if there's a violation of the National
14 Electric Safety Code, then that violation of the code
15 should be corrected.

16 It doesn't matter if make-ready is
17 ultimately going to be done for anyone. If the owner
18 of a facility, if it's a power company or if it's a
19 cable company or a telephone company, if they discover
20 that they have a violation of the National Electric
21 Safety Code, then I think they will make plans, as the
22 code requires, to document that violation and keep

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